IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 5TH OCTOBER 2007 / 13TH ASWINA 1929

WP(C).No. 10564 of 2007(G)

PETITIONER:

SANJAY VARGHESE,
M/S. MARYVILLA AGENCIES,
WEST OTHARA, THIRUVALLA.

BY ADV. SRI.V.V.NANDAGOPAL NAMBIAR
SRI.T.P.PRADEEP

RESPONDENTS:

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1. KULANADA BLOCK PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
KULANADA.

2. THE SECRETARY, KULANADA BLOCK
PANCHAYATH, KULANADA.

3. M/S.NEEMA MARKETING,
KOTTAYAM.

BY ADV. SRI.ASP.KURUP
SRI.SADCHITH.P.KURUP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/10/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C)No.10564 OF 2007

DATED THIS THE 5TH OCTOBER , 2007

J U D G M E N T

The petitioner, Sanjay Varghese, is the proprietor of M/s.Maryvilla Agencies stated to be a small scale industrial unit registered with the industries department engaged in the manufacture, distribution and sale of electrical goods. It is claimed that the petitioner manufactures various types of electrical goods including street light fittings. Ext.P1 is the copy of the registration certificate issued by the District Industries Centre to the petitioner. It is claimed that on account of Ext.P1, the petitioner is entitled for preference in the matter of supply of electrical goods to various Government department and local authorities. The first respondent is the Kulanada Block Panchayath and the 2nd respondent is its Secretary. The third respondent is M/s.Neema Marketing. The 2nd respondent on behalf of the first respondent invited tenders through Ext.P2 notification for the supply of single set of tube light fittings for street lights. The petitioner submitted Ext.P3 quotation. According to the petitioner, this quotation was lower when compared to the rates offered by the third respondent. The petitioner alleges that respondents 1 and 2 are trying to confer undue favour to the third

respondent and award the tender to him. Bieng an S.S.I.Unit, the petitioner has got first preference over other persons and the goods which are sought to be purchased from the third respondent and are goods which are exclusively reserved to the domain of small scale industries. Those goods cannot be given to anybody else as per Ext. P4 circular issued by the Government. The petitioner therefore prays for issue of a writ of mandamus directing respondents 1 and 2 to strictly follow the provisions contained in the Stores Purchase Manual and to accept the tender submitted by the petitioner and issued work order to the petitioner.

2. The third respondent has filed a counter affidavit. It is contended that Ext.P1 registration issued to the petitioner is one issued for the manufacture of electric chokes, CFL street light and adapter. The petitioner will have preference in the matter of supply of electrical goods. As per Rule 38 of the Stores Purchase Manual only in case, the petitioner is supplying the goods manufactured by the petitioner and not for supply of goods manufactured by other reputed companies. Denying the other averments in the writ petition, it is contended that it is the third respondent who emerged as the lowest quotationer among all eligible quotationers. It is then submitted that

the first and the 2nd respondent have already accepted the tender of the third respondent and the work order also have been issued accepting the third respondent's tender which was the lowest one. Ext.R3(A) is the copy of the work order dated 27-6-2007. On that day itself, the third respondent entered into an agreement with the 2nd respondent for supply of goods and it is during the time of supply that this Court passed interim order of all tender proceedings. It is pointed out that the petitioner has not challenged the resolution passed by the first respondent awarding the order to the third respondent. As regards Ext.P5 judgment and Ext.P4 circular, it is contended that they operate in different fields and do not apply to the facts which obtained in this case. Appendix XXVIII of Rule 38 of the Stores Purchase Manual does not cover the item and it is pointed out that Appendix-XXVIII is allowable only if the petitioner himself is the manufacturer of the items mentioned therein.

3. I have heard the submissions of Sri.T.P.Pradeep, learned counsel for the petitioner and those of Sadchit P.Kurup, learned counsel for the third respondent. The learned counsel would make arguments on the basis of the pleadings of the respective parties and the documents placed on record. My attention was drawn by both

sides to the Stores Purchase Manual issued by the Government and particularly to Rule 38 therein.

4. Having considered the rival submissions, it is seen that the quotation submitted by the petitioner was for the supply of tube lights and fittings manufactured by the reputed companies like Philips and Crompton. Under Ext.P1 registration issued by the Industries Department, the petitioner is not competent or authorised to manufacture bulbs and electrical fittings. The work order has already been issued to the third respondent and in my opinion it cannot be said that action of the 2nd respondent is vitiated to the extent of justifying exercise of judicial review by this Court. The writ petition fails and will stand dismissed. No costs.

(PIUS C.KURIAKOSE, JUDGE)

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